

THE ABERDEENSHIRE LICENSING BOARD

A Special Meeting of the ABERDEENSHIRE LICENSING BOARD appointed in terms of the Licensing (Scotland) Act 2005 will be held by **TEAMS** only on **WEDNESDAY, 18th January 2023 at 10.15 A.M.**

Members are invited to join the call from **10 A.M.**

11th January 2023

Karen Wiles
Clerk to the Licensing Board

BUSINESS

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST**

3. **STATEMENT ON EQUALITIES**

(Pages 3-4)

Consider, and if so decided, adopt:- "In line with the Board's legal duty under section 149 of the Equality Act 2010 the Board, in making decisions on the attached reports -

1. To have due regard to the need to -

- (i) eliminate discrimination, harassment and victimisation;
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it.

2. Where an Integrated Impact Assessment is provided, to consider its contents and take these into account when reaching a decision

4. **LICENSING (SCOTLAND) ACT 2005 –OCCASIONAL LICENCE – HEARING – KINTORE PRIMARY SCHOOL PTA**

(Pages 5-32)

5. **DATE OF NEXT MEETING –22nd February 2023**

(Page 33)

STATEMENT ON EQUALITIES

PUBLIC SECTOR EQUALITY DUTY – GUIDANCE FOR MEMBERS

What is the duty?

In making decisions on the attached reports, Members are reminded of their legal duty under section 149 of the Equality Act 2010 to have due regard to the need to:-

- (i) eliminate discrimination, harassment and victimisation;
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it. The “protected characteristics” under the legislation are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; and (in relation to point (i) above only) marriage and civil partnership.

How can Members discharge the duty?

To ‘have due regard’ means that in making decisions, Members must consciously consider the need to do the three things set out above. This requires a conscious approach and state of mind. The duty must influence the final decision. However, it is not a duty to achieve a particular result (e.g. to eliminate unlawful racial discrimination or to promote good relations between persons of different racial groups). It is a duty to have due regard to the need to achieve these goals. How much regard is ‘due’ will depend upon the circumstances and in particular on the relevance of the needs to the decision in question. The greater the relevance and potential impact that a decision may have on people with protected characteristics, the higher the regard required by the duty.

What does this mean for Licensing Board decisions?

Members are directed to the section in reports headed ‘Equalities, Staffing and Financial Implications’. This will indicate whether or not an Integrated Impact Assessment (IIA) has been carried out as part of the development of the proposals and, if so, what the outcome of that assessment is. An IIA will be appended to a report where it is likely that the action recommended in the report could have a differential impact (either positive or negative) upon people from different protected groups. The report author will have assessed whether or not an IIA is required. If one is not required, the report author will explain why that is. Where an IIA is provided, Members should consider its contents and take those into account when reaching their decision. Members should also be satisfied that the assessment is sufficiently robust and that they have enough of an understanding of the issues to be able to discharge their legal duty satisfactorily.

For more detailed guidance please refer to the following link:-

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/psed_technical_guidance_scotland.doc

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO LICENSING BOARD – 18 January 2023

LICENSING (SCOTLAND) ACT 2005

APPLICATION FOR OCCASIONAL LICENCE – REPORT FROM LICENSING STANDARDS OFFICER, CONTRARY TO POLICY

APPLICANT – JENNIFER FRASER c/o KINTORE PRIMARY SCHOOL PARENT TEACHER ASSOCIATION (VOLUNTARY ORGANISATION)

HEARING

1 Executive Summary/Recommendations

1.1. This report relates to an application for an occasional licence to which a report has been received from the Licensing Standards Officer and the Board Convenor in consultation with the Depute Clerk has deferred consideration of the application to a hearing of the Board in terms of Section 2.4 of the Scheme of Delegation.

Recommendations

- 1.2. **It is recommended that the Board considers the materials before them and, in respect of the application, –**
- (a) **Determines whether there is enough evidence before the Board to allow a determination to be made, or whether the Board needs to defer consideration of the matter to the next available Board meeting for further material to be made available; and**
 - (b) **Where the Board has concluded that there is sufficient evidence before them to allow a determination to be made, to consider in respect of the application, whether said application should be granted or refused.**
 - (c) **If minded to grant the application, to grant subject to the local conditions listed at Section 3.14 and subject to the specific conditions**

listed at Section 3.15 and any other conditions the Board may determine to be required in respect of the applications.

2. Purpose and Decision-Making Route

2.1. In terms of Section 58(1) of the 2005 Act, A Licensing Board may, on application of a premises Licence Holder, personal Licence Holder or voluntary organisation, made in relation to any premises (other than licensed premises) in the Board's area, issue to the applicant an occasional licence authorising the sale of alcohol on the premises.

Application

2.2. An Application was lodged by Kintore Primary School Parent Teacher Association, Kintore School, Castle Walk, Kintore, Inverurie, AB51 0RU, on 1 December 2022 for an occasional licence for:

(a) Location: Kintore School, Castle Walk, Kintore, Inverurie, AB51 0RU

Event: Fundraiser

Date: 27 January 2023

Times: ON SALES: 18:30 to 21:00

OFF SALES: N/A

Children and Young Persons Permitted: YES

Other relevant information on application: The fundraiser is a Family Beetle Drive, there will be recorded background music and some party games like corners & heads or tails

A copy of the application form is attached as **Appendix 1** to this Report and referred to for its terms.

2.3. The application has not been previously considered by the Board.

3. Discussion

Consultations

- 3.1. The Licensing Board, by virtue of Section 57(1)(a) and (b) of the Licensing (Scotland) Act 2005 (“the Act”) gave notice of the Occasional Licence application, together with a copy of it to - (a) the appropriate Chief Constable and (b) the Licensing Standards Officer on 16 November 2022. Responses were requested by 23 December 2022.
- 3.2. Police Scotland lodged a representation by email dated 5 December 2022.
- 3.3. The Licensing Standards Officer lodged a report by email dated 8 December 2022.
- 3.4. Copies of the representation/report are attached as **Appendix 2** to this report and are referred to for their terms.
- 3.5. The applicant was sent a copy of the report from the Licensing Standards Officer on 15th December 2022. They were sent a copy of the representation from Police Scotland by email on 4 January 2023.

Publicity

- 3.6. The application was advertised on the Board’s website for the statutory period of 7 days.
- 3.7. No objections/representations were received from the public as a result.

Board Policy

- 3.8. Paragraph 4.18 of Supplementary Policy 4 of the Board’s Policy Statement refers to Occasional Licences and states as follows:

4.18 The Boards recognise the particular impact of alcohol misuse on children and young persons and will assist in changing detrimental attitudes and behaviours. Accordingly, there will be a presumption against granting occasional licences for events that are aimed primarily at children or young persons, such as but not limited to, school sports days or children’s parties

Implications

- 3.9. If the Board determines that an occasional licence should be granted, the licence will take effect for the duration of the event.
- 3.10. If the Board refuses an occasional licence, then no alcohol can be sold during the event.

Legal Test

3.11. The Legal Test is as set out in **Appendix 4** to this report. The Board must grant the application if none of the grounds for refusal apply. The grounds for refusal are –

- (a) that the premises to which the application relates are excluded premises
- (b) that the application must be refused under section 56(6A), 64(2) or 65(3),
- (c) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that, having regard to –
 - (i) the nature of the activities proposed to be carried on in the premises to which the application relates,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises

The Board considers that the premises are unsuitable for use for the sale of alcohol.

- 3.12. If granted, the mandatory conditions listed in the 2005 Act will attach to the occasional licence.
- 3.13. In determining the application, the Board must take into account the report from a Licensing Standards Officer.

3.14. If the Board is minded to grant the application, it is recommended that the following local conditions should apply to the licence:

- Conditions 2, 3, 3(a), 6(a), 6(b) and 12

The Board may wish to consider whether any further local conditions should apply as they consider necessary or expedient for the purposes of any of the licensing objectives. **Appendix 3** contains the list of available local conditions

3.15. The Board may also attach conditions which are specific to the premises to be licensed, where required. If minded to grant to grant the application, it is recommended that the following specific conditions should apply to the licence:

- All children aged 15 and under must be accompanied by an adult for the duration of the event.

Procedure

3.16. Each application should be considered on its own merits.

3.17. The Board should consider the application, report from the Licensing Standards Officer and the submissions from the parties made at the hearing. If the Board is not satisfied that there is sufficient information to make a decision, the matter should be deferred to allow further information to be obtained.

3.18. All parties have been invited to attend the hearing by email dated 4 January 2023. Copies of this report, the legal test and the Board's Guidance on Procedures for hearings were included with the letter.

3.19. The Board should follow the procedure outlined at **Appendix 5** of this report.

3.20. In terms of Board Procedure, any documentation submitted will be circulated to Members and all parties prior to the meeting taking place, where it is possible to do so. Such written documentation will form **Appendix 6** to this report, if submitted.

3.21. Members' options in disposing of the application are: -

- (a) To grant the application;
- (b) Refuse the application;
- (c) Grant subject to varied hours and/or additional conditions; or
- (d) Determine that further evidence is required in which case the applications should be referred to the next available Board Meeting in order further information can be obtained in the interim.

3.22. When coming to a decision the Board must consider the evidence provided and the contents of the legal test. Supplementary advice and information can be made available by officers, if required.

4. Priorities, Implications and Risk

4.1. The Board must determine this matter on its own merits in accordance with the legal tests set out in the relevant legislation. The Board is a separate legal entity to Aberdeenshire Council and therefore the Council's priorities do not apply to this report.

4.2. The application is not within the terms of the Board's policy.

Supplementary Policy 4 - Operating Hours

Occasional Licences

The Boards recognise the particular impact of alcohol misuse on children and young persons and will assist in changing detrimental attitudes and behaviours. According, there will be a presumption against granting occasional licences for events that are aimed primarily at children or young persons, such as but not limited to, school sports day or children's parties.

4.3. The table below shows whether risks and implications apply if the recommendations are agreed:

Table 1 Risks and Implications

Subject	Yes	No	N/A
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Financial		X	
Staffing		X	
Equalities and Fairer Scotland Duty		X	
Children and Young Peoples' Rights and Wellbeing		X	
Climate Change and Sustainability			X
Health and Wellbeing			X
Town Centre First			X

- 4.4. An Integrated Impact Assessment has not been carried out as the processing of the application(s) has not identified any issues that would fall within the remit of those part of the IIA that and the Board must determine this matter in line with the legal test.
- 4.5. There are no staffing and financial implications.
- 4.6. The Council's Corporate and Directorate Risk Registers do not apply to the Licensing Board as it is a separate legal entity.
- 4.7. The Council's Town Centre Principle does not apply in respect of this matter as the Licensing Board is a separate legal entity

5. Governance

5.1 The Depute Clerk, in consultation with the Board Convenor, has opted to defer consideration of the application to a hearing of the Board. This has been done in terms of Paragraph 2.4 of the Board's current Scheme of Delegation enabling the Board to determine same.

Karen Wiles
Clerk to the Board
Report Prepared by Cian Gullen, Trainee Solicitor
Depute Clerk to the Board
Date: 4 January 2023
IDOX File Reference: LAOCC/02962/22

List of Appendices
Appendix 1 – Application
Appendix 2 – Representations
Appendix 3 - Local Conditions
Appendix 4 – Legal Test
Appendix 5 – Procedure
Appendix 6 – Written Submissions (if received)

**Appendix 1
Application**

Occasional Licence Application LAOCC/02962/22

Question	Response
Date Application Received	01/12/2022
Date licence is required for	27/01/2023
Date licence is to end	28/01/2023
Premises licence number	
Personal Licence number	
Name of voluntary organisation	Kintore Primary School Parent Teacher Association
Enter the dates of previous occasional Licences granted by the Board between 1st January and 31st December (optional)	
Forenames	[REDACTED]
Surname	[REDACTED]
Date of birth	[REDACTED]
Address	[REDACTED]
Town	[REDACTED]
Postcode	[REDACTED]
Email address	[REDACTED]
Telephone number	[REDACTED]
Mobile number	[REDACTED]
Description of Premises	Unlicensed Premises
Description of activities to be carried on in the premises	Fundraiser
Full postal address of premises	Kintore School Castle Walk Kintore Inverurie AB51 0RU
Is alcohol to be sold off the premises?	No
Is alcohol to be sold on the premises?	Yes
Time alcohol will be on sale for consumption on the premises from	18:30
Time alcohol will be on sale for consumption on the premises to	21:00

Question	Response
State the times at which any other activities, other than alcohol sales, will be carried out on the premises	18:00-21:00
Will children be permitted entry?	Yes
What age of children will be permitted entry?	0-15
What time will children be permitted entry from?	18:30
What time will children be permitted entry to?	20:30
Which areas of the premises will children be permitted access to?	Children will enter with their family via the main school door, they will then follow the corridor along to the main hall for the fundraiser. children will then have access to part of that corridor to use the toilets.
Will young persons be permitted entry?	Yes
What age of young persons will be permitted entry?	16-17
What time will young persons be permitted entry from?	18:30
What time will young persons be permitted entry to?	20:30
Which areas of the premises will young persons be permitted access to?	young persons will gain access to the school via the main entrance and will follow the corridor along to the main hall for the fundraiser. Young persons will then have access to the corridor to use the toilets.
What type of event is to be held?	Fundraiser
What entertainment, if any, will be provided?	The fundraiser is a Family Beetle Drive, there will be recorded background music and some party games like corners & heads or tails
Approximately how many people are expected to attend?	90
How was this figure obtained?	capacity of venue
What age group will form the majority of those attending?	30 - 50
How is access gained to the event?	advance ticket sales
How many Security Industry Authority (SIA) stewards will be employed at the event?	0
How many volunteer stewards will be at the event?	0
Will alternatives to glass receptacles be provided?	Yes

Question	Response
Is the premises a registered club which has been issued with a premises licence?	No
Is a plan attached to a Public Entertainment Licence issued for the premises?	No
How will you prevent crime and disorder at the event?	Ticket sales are advance purchase only and to school community families, members of the PTA will be at the event to supervise & run the event.
How will you secure public safety at the event?	Fire exits will be sign posted & information on what to do in the event of an emergency at the beginning of the fundraiser. PTA volunteers will be visible throughout and available to help in the event of an evacuation.
How will you prevent public nuisance at the event?	A small number of community families will be in attendance, we do not foresee any public nuisance
How will you promote and protect public health at the event?	There are no public health concerns. Access to hand washing & toilets available on the night.
How will you protect children from harm at the event?	Children will be under the supervision of their families. The bar area will be set up in an area away from the main hall with a partition wall along any areas (corridor) where children or young persons may pass. Signage that bar is for over 18's only, tuck shop for children and young persons to purchase snacks and soft drinks away from the bar area.

Appendix 2

Representation from LSO

Date: 08 December 2022

Depute Clerk to Aberdeenshire Licensing Board

Dear Sir/Madam

Licensing (Scotland) Act 2005:

Objection to occasional licence application **Premises: Kintore Primary School**

Per: Jennifer Fraser c/o Kintore Primary School Parent Teacher Association

Looking at the application submitted for the event to be held at Kintore Primary School on 27 January 2023, I am of the understanding that this event is aimed primarily at persons under the age of 18 years, therefore this is inconsistent with Aberdeenshire Licensing Boards Statement of Licensing Policy 2018-2023 as detailed below. I therefore recommend that the Licensing Board determine this application:

Supplementary Policy 4 - Operating Hours

Occasional Licences

4.18 The Boards recognise the particular impact of alcohol misuse on children and young persons and will assist in changing detrimental attitudes and behaviours. According, there will be a presumption against granting occasional licences for events that are aimed primarily at children or young persons, such as but not limited to, school sports day or children's parties.

The application states the event is a family beetle drive which also includes party games and alcohol sold from 18:30 hours until 21:00 hours. Children and young persons are permitted to the event until 20:30 hours.

Should the licensing board grant this application I would recommend the following local conditions are attached to the occasional licence:

2, 3, 3(a), 6(a), 6(b), 12

- All children aged 15 and under must be accompanied by an adult for the duration of the event.

Yours faithfully



Licensing Standards Officer

Representation from Police Scotland

This response is subject to government guidance or measures in place at the time of the event, in respect of COVID-19.

In terms of Section 58(1)(b)(ii) of the Licensing (Scotland) Act 2005 Police Scotland make the following representation and recommend that the licence be granted with the following conditions

1. A minimum of one person present is either the holder of a Personal Licence under the Act or has undergone training to the standard provided for in the Licensing (Scotland) Act 2005 Schedule 3 Paragraph 6;

2.Children and young persons to be accompanied by a responsible person aged 18 years or over.

[REDACTED]

Licensing Administrator

[REDACTED]

Police Service of Scotland

North East Division

Blackhall Road

INVERURIE

Appendix 3

Local Conditions

LIST OF LOCAL CONDITIONS FOR OCCASIONAL LICENCES

1. The main bar to be situated in a suitable place separate from dance floor or to be partitioned off from the dance floor area.
2. No under 18's to be allowed in the main bar area.
3. The licence holder or their nominee and sufficient responsible persons are to be present throughout the event to ensure its safe conduct and compliance with the Licensing (Scotland) Act 2005
- 3(a) The licence holder must ensure that sufficient staff/volunteers are on duty to ensure a safe and responsible event. Such persons must be easily identifiable as such to persons present and should be made aware of their duties, policies and practices by the licence holder. They must be responsible, capable and not drink alcoholic liquor for the duration of the event. Their duties are to:
 - Confirm that persons who seek access to the event have paid for admission or have appropriate passes/invitations
 - Supervise entrance doors/access points at all times to ensure that no fire or other exits are blocked
 - Be aware of the fire safety precautions and procedures and all other policies and practices appropriate to the event
 - Provide assistance to patrons, including customer care, directions to facilities and health and safety.
 - Remain on the premises until the end of permitted hours and all patrons have vacated the premises.
 - Be aware of the provisions of the Licensing (Scotland) Act 2005 which impact on the event
 - Carry out other "non-licensable activities" as deemed appropriate by the licence holder.
4. A sufficient number of Security Industry Authority licensed stewards must be present to address the identified needs/risks of the event. They will be responsible for controlling the licensed area of the event during licensed hours and until attendees have dispersed from this area at the end of the event. SIA stewards must:

- Actively police the premises including fenced area if applicable, to perform all "manned guarding" activity as directed by the event organiser which are in line with their role under the Private Security Act 2001.
 - Supervise entrance doors/access points at all times.
 - Identify and refuse entry to drunken persons.
 - Be aware of the fire safety precautions and procedures.
 - Be made aware of the drug prevention policy.
 - Ensure that no fire or other exits are blocked.
 - Be easily identifiable to those present at the event as an SIA registered steward and display the appropriate identification.
 - Not drink alcoholic liquor for the duration of the event.
 - Ensure that no patron removes glasses, or open or closed vessels from the premises when exiting for any reason.
 - Be responsible, capable and aware of their duties.
 - Remain on the premises until the end of permitted hours and all patrons have vacated the premises.
5. An adequate number of staff/volunteers/stewards should have knowledge of first aid procedure.
- 6(a) All stewards/staff/volunteers must be aware of their responsibilities under the Licensing (Scotland) Act 2005.
- 6(b) Bar staff must be able to identify and refuse service of alcoholic beverages to drunken persons.
7. An accurate and appropriate counting method must be in place to enable the provision of attendee numbers within the event at any particular time.
8. All refreshments to be decanted in to plastic containers at the point of sale.
9. Entry to the event must be by ticket only purchased prior to the day of the event /or by -----hours on the day of the event (delete whichever inappropriate).
10. A system must be employed to identify and distinguish between those attending the event that are under or over 18 years of age. Identification by way of a passport or driving licence must be seen as proof of age.
11. There can be no re-entry to the event if ejected.

12. A separate under 18's bar to be provided where soft drinks only are sold.
13. No glass, cans or other containers allowed to be taken into licensed area of the event by attendees. Suitable receptacles for these items must be provided at the entrance to the licensed area.
14. Tastings of alcohol are permitted in a quantity commensurate with a reasonable sample of product on offer. All samples to be served in plastic containers.
15. A notice must be prominently displayed at point of sale indicating that alcohol purchased must not be consumed within the venue.
16. All staff employed in the sale or supply of alcohol must have received staff training to the standard provided for in the Licensing (Scotland) Act 2005 Schedule 3 Paragraph 6 and evidence of this must be provided to the satisfaction of the Licensing Standards Officer, prior to the occasional licence taking effect.

Appendix 4

Legal Test

Licensing (Scotland) Act 2005

Part 4 & Sections 56-61 and Schedule 4

Application for an Occasional Licence

LEGAL TEST

The legal test is set out in Section 59 of the Act.

- (1) An occasional licence application received by a Licensing Board is to be determined in accordance with this section
- (2) If the Board has not received any –
 - (a) ...¹
 - (b) report from a Licensing Standards Officer under Section 57(3), or
 - (c) notice of objection or representation under Section 58(1),Relating to an application, the Board **MUST GRANT** the application unless the application must be refused under Section 56(6A)², 64(2)³ or 65(3)⁴.
- (3) In any other case, the Board **MUST** consider whether any of the grounds for refusal applies and,
 - (a) If none of them applies, the Board **MUST GRANT** the application, or
 - (b) If any of them applies, the Board **MUST REFUSE** the application.
- (4) The Board **MAY** hold a hearing for the purposes of determining any application which is to be determined in accordance with subsection (3).
- (5) Where the Board does not hold a hearing, the Board **MUST** ensure that, before determining the application, the applicant is given an opportunity to comment on any such notice or report as is referred to in subsection (2).
- (6) The grounds for refusal are –
 - (a) that the premises to which the application relates are excluded premises

¹ Repealed by the Criminal Justice and Licensing (Scotland) Act 2010

² Granting the application would result in the occasional licence limit being exceeded

³ Granting the application would result in 24 hour opening

⁴ Granting the application would exceed the maximum off sale core hours of 10am – 10pm

- (b) that the application **must** be refused under section 56(6A), 64(2) or 65(3),
- (c) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that, having regard to –
- (i) the nature of the activities proposed to be carried on in the premises to which the application relates,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises

The Board considers that the premises are unsuitable for use for the sale of alcohol

(7) ...⁵

(8) In determining any application which is to be determined in accordance with subsection (3), the Board **MUST** take into account any report from a Licensing Standards Officer under section 57(3).

There are five licensing objectives which underpin the 2005 Act. These are:

- **Preventing crime and disorder**
- **Securing public safety**
- **Preventing public nuisance**
- **Protecting and improving public health, and**
- **Protecting children and young persons from harm.**

The Licensing Boards' policy statement must promote these licensing objectives and sets out how the Board expects applicants to comply with and promote the objectives. The following parts of the policy are relevant to the consideration of applications for premises licences and provisional premises licences:

- Appendices 1 and 2 to the Main Policy Statement (Appendix 2 applies in North only)
- Supplementary Policy 4 – Operating Hours
- Supplementary Policy 6 – Licence Types and Board Procedures
- Supplementary Policy 7 - private members clubs

1. A Licensing Board MAY, on the application of any of the persons mention at paragraph 2. below, made in relation to any premises (other than licensed premises) within the Board's area, issue to the applicant a licences (referred to as an "occasional licence") authorising the sale of alcohol on the premises.

2. Those persons are –

- (a) the holder of a premises licence,
- (b) the holder of a personal licence, and

⁵ Repealed by the Criminal Justice and Licensing (Scotland) Act 2010

- (c) a representative of any voluntary organisation.
3. The Act and the Occasional Licence (Scotland) Regulations 2007 prescribe the format of the application for an occasional licence and the format of the licence itself.
 4. **An occasional Licence has effect for such period of NOT MORE THAN 14 days** as the Licensing Board may determine.
 5. A Licensing Board MAY issue an occasional licence in respect of any one voluntary organisation in any period of 12 months –
 - (a) **not more than 4** occasional licences each having effect for a period of **4 days or more**, and
 - (b) **not more than 12** occasional licences each having effect for a period of **less than 4 days**,

Provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the organisation have effect **does not exceed 56**.

Private Members Clubs and Occasional Licence

6. The Licensing (Clubs)(Scotland) Regulations 2007 provide that the fact that a premises licence is in effect in respect of premises used wholly or mainly for the purposes of a club which falls within the description of “licensed premises” it does not prevent an occasional licence being granted in respect of the premises.
7. The provisions set out for voluntary organisations at paragraph 5. above, also apply to Private Members Club in relation to occasional licences.
8. For any period during which an occasional licence has effect in respect of those premises, the conditions of any premises licence issued in respect of the premises are NOT to have effect.

Notification of Applications

9. The Board MUST give notice of the application to the Chief Constable and any Licensing Standards Officer for the area. 21 days are allowed for responses.
10. The Board can waive the period of 21 days to such shorter period of not less than 24 hours as the Board may determine (This is normally done for Funeral Teas)
11. Applications for occasional licences MUST be advertised on the Board’s website. Members of the public have 7 days⁶ in which to lodge a representation or objection (unless the circumstances in paragraph 10 above apply in which case no advert is required).

⁶ Paragraph 18 The Licensing (Procedure)(Scotland) Regulations 2007

12. A Licensing Standards Officer may submit to the Board a report setting out the Officer's comments on the application.
13. Any person may be notice to the Licensing Board –
 - (a) object to the application on any ground relevant to one of the grounds of refusal, or
 - (b) make representations to the Board concerning the application, including in particular, representations
 - (i) In support of the application, or
 - (i) As to conditions which the person considers should be imposed.
14. Where the Board receives notice of an objection or representation the Board MUST
 - (a) give a copy of the notice to the applicant, and
 - (b) have regard to the objection or representation in determining the application.

Determination

15. The Boards' current Scheme of Delegation make the following provisions for determination of applications for occasional licences:-

Section 2.3	Determination of "Fast Track" Application for Occasional Licence	Delegated to the Clerk, following consultation with the Convenor in the first place
Section 2.4	Determination whether or not the Board will hold a hearing to determine an application for an occasional licence where an objection, representation or notice recommending refusal from the Chief Constable or Licensing Standards Officer OR where the application is contrary to the terms of the Board's Policy	Delegated to the Clerk following consultation with the Convenor in the first place
Section 2.5	Where a decision has been taken by the Clerk, following consultation with the Convenor NOT to hold a hearing in terms of Section 59(4) of the Act, the determination of the application following an opportunity for the applicant to comment on the	Delegated to the Clerk following consultation with the Convenor in the first place.

	representation in terms of Section 59(5)	
Section 2.6	Determining whether to accept an application for an occasional licence that has been lodged late in terms of Board's Policy	Delegated to the Clerk following consultation with the Convenor in the first place.
Section 3.9	Determining an application for an occasional licence – where no objections or representations have been received, nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal including late applications approved in terms of Section 2.5 above	Delegated to the Clerk to the Board or any person appointed to assist them
Section 3.10	Determining an application for an occasional licence that has been lodged in respect of a funeral tea	Delegated to the Clerk to the Board or any person appointed to assist them
Section 3.11	To impose conditions in terms of Section 60 in respect of an occasional licence as necessary or expedient for the purpose of any licensing objective	Delegated to the Clerk to the Board or any person appointed to assist them

Each application must be determined on its own merits.

Conditions of Licence

16. There are mandatory conditions which must attach to every occasional licence granted. These are set out in Schedule 4 of the 2005 Act.
17. The Boards also have a pool of local licence conditions that may attach to an occasional licence. Only those that are appropriate to the event being licensed will be attached.

SCOTTISH GOVERNMENT GUIDANCE

18. Section 4 of the Scottish Government's Statutory Guidance to Licensing Authorities relates to premises licences. Part of that Section relates to applications for Occasional Licences. The Board should note that in terms of Section 142(4) of the Act, a Board deciding not to follow this guidance must give Ministers notice of that decision together with a statement of the reasons for it.

EXTRACT FROM SCOTTISH GOVERNMENT GUIDANCE RELATING TO OCCASIONAL LICENCES

5. Occasional Licence.

137. This chapter concerns the system for administering the arrangements in the 2005 Act for the temporary sale or supply of alcohol which is not authorised by a premises licence.

Occasional Licences

Procedure

138. The procedures for handling occasional licences are set out in section 56-61 of the Act. Those persons eligible to apply for an occasional licence are:-

- The holder of a premises licence
- The holder of a personal licence, and
- A representative of any voluntary organisation.

139. Occasional licences are subject to mandatory national licensing conditions set out in Schedule 4 to the 2005 Act. An example of where occasional licences might arise would be where a licensee wished to make provision for the sale of alcohol at a wedding reception or other social event held outwith their licensed premises. Voluntary organisations may also apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation's activities. Where an occasional licence is in force it will not negate the requirement for a public entertainment licence and late night catering licence issued under the Civic Government (Scotland) Act 1982 where appropriate.

140. Occasional licences may be given in respect of a premises licence covering a member's club. This means, for example, that a members' club which under its licence is normally only permitted to supply alcohol to its members and their guest may during the period covered by an occasional licence admit members of the public and sell alcohol to them. This is to enable such premises to be used for community events and if it was found to be a regular occurrence the licensing board should consider reviewing the licence to ensure it fulfilled the licensing principles.

141. The maximum duration of each occasional licence is 14 days.

142. Under the 2005 Act applications for occasional licences will, for the first time, be subject to a statutory procedure for notification and determination. This is intended to ensure there is appropriate notification of applications and the ability to object and make representation.

Notification & Objections

143. The 1976 Act required all applications to be intimated by the applicant to the Chief Constable. Such applications will now be forwarded to the Chief

Constable and the relevant Licensing Standards Officer by the Licensing Board. Both of whom within 21 days of receiving an application can submit their views to the Board. For the Licensing Standards Officer this is an opportunity to submit comments which may include recommendations for additional conditions to be attached by the Licensing Board.

144. Where no objections, representations or notices are received from the police and/or other statutory objectors there is no need for a hearing and applications can be delegated to the Clerk. However, where objections and/or representations have been received and a hearing is proposed, the Act provides that Boards must provide the applicant with any information relevant to their application raised in objections, representations or in a notice provided by the Police.
145. This new regime benefits voluntary organisations with an increase from the 1976 Act position of 4 occasional permissions per year. Under the 2005 Act a single voluntary organisation may now hold over a 12 month period:
 - Not more than 4 occasional licences of 4 days or more in duration;
 - Not more than 12 occasional licences of less than 4 days in duration
146. However the total number of days on which an occasional licence has effect must not exceed 56 during any 12 month period.
147. Many voluntary organisations will not have commercial backgrounds or ready access to legal advice. They will include, for example, individuals acting on behalf of charities, community and voluntary groups, schools, churches and hospitals all of which may stage public events at which the sale of alcohol may take place. Licensing Boards should therefore ensure that local publicity about the system of occasional licences is clear and should strive to keep the arrangements manageable and user-friendly for these groups.

Police Intervention

148. The notification requirement provides the police with an opportunity to consider whether they should object to the event taking place for reasons of preventing crime and disorder. Such cases might arise because of concerns about the scale, location or timing of the event. The general run of cases where alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder (e.g. at weddings or small social, community, charitable or sporting events) should not give rise to the use of these police powers. The 2005 Act provides that the police may issue an objection notice because they believe the event would undermine the crime prevention objective set out in the Act. The police must issue any objection notice within 21 days of being notified, but they can subsequently withdraw their objection notice. If the police do not intervene, they will still be able to rely on their powers of closure under section 97 of the 2005 Act should disorder subsequently arise. The issuing of such an objection notice requires the consideration of the objection by the licensing Board at a hearing. Consideration by the Licensing Board of an objection made by the police to an occasional licence application is confined to

the crime prevention objective. It may not, for example, uphold a police objection notice on grounds of public nuisance. At the hearing, the police and the premises user may be heard by the relevant licensing committee. A hearing would not be necessary if the objection notice is withdrawn by the police.

149. The possibility of police intervention is another reason why event organisers should be encouraged by local publicity not to rely on giving the minimum amount of notice and to contact local police licensing officers at the earliest possible opportunity about their proposals.
150. The police may withdraw their objection notice at any stage if the proposed premises user agrees to modify his proposal to meet their concerns. The Licensing Board will then be sent or delivered a copy of the modified notice by the police as proof of their agreement.

Occasional Extensions

Extended hour applications

151. An occasional extension enables for ad hoc occasions the sale of alcohol for a period beyond the normal hours during which alcohol may be sold at a premises under its premises licence. It should normally be possible for applicants for premises licences to anticipate special occasions which occur regularly each year, such as bank holidays and incorporate appropriate opening hours for these occasions in their operating plans. Where it is not and specific premises are asked to handle or wish to provide for an event at short notice, Sections 68 to 70 enable Licensing Boards to process such extensions hours where there is no provision for the extended hours in the operating plan. The application must relate to a special event or occasion to be catered for on the premises, for example a wedding.
152. The relevant chief constable and Licensing Standards Officer must be notified by the Licensing Board of an application by the premises licence holder. Within 10 day of the receipt of the application, the Police may choose to object and the Licensing Standards Officer must submit a report to the Licensing Board. Since these applications are likely to arise at short notice a detailed determination procedure is impractical but the Board should be able to gather sufficient information from the LSO report and from the Police.
153. The Board will have complete discretion as to whether to grant the application taking into account any Police objections and LSO comments and having regard to the licensing objectives. The Board may hold a hearing for the purposes of determining any application, but this is not mandatory. Where the Board does not hold a Hearing, the Board must ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the Police or adverse comments from the Licensing Standards Officer.

154. No extension can be granted to operate for a period of more than one month and such an extension cannot be further extended. If a Licensing Board receives continual requests for applications consideration should be given to whether a premises licence should look to vary its operating plan.

Relaxation of opening hours for local, national & international events

155. As stated above applicants for premises licences, in their operating plans, should include the hours needed for special occasions which occur regularly each year. While extended hour applications should be sufficient to cover one-off special events such as a family anniversary party. However, with the passage of time exceptional events of local, national or international significance may arise which could not have been anticipated.
156. Such events can give rise to the need to vary the conditions for a number of licensed premises. In such circumstances it will be open to local licensing boards under section 67 of the 2005 Act to grant a general extension of licensed hours to enable premises to open for specified extended hours on these special occasions. Examples might include a one-off local festival, or events such as the Commonwealth Games. In the interest of public safety it would be good practice for the Boards to request the views of the police before granting such a general extension – although this is not a statutory obligation.
157. The grant of a general extension of hours can apply to the whole of the Licensing Board's area or only to specified parts. It can apply to all the relevant premises in the Board's area except to those premises solely concerned with off sales or only to specified premises or types of premises. The extra hours granted can be a general extension or particularly specified. However the granting of a general extension does not require a licensed premises to be open for the sale of alcohol during the extended period.
158. Where a Board decides to grant such a general extension it must give notice to the police and to relevant licence holders who are affected.

Appendix 5
Procedure

PROCEDURES FOR HEARINGS

- (a) Identify whether the applicant and his/her advisors are present.
- (b) Identify whether the Objector(s) and his/her advisors are present. [in turn]
- (c) Invite the applicant to speak to his application (outline to the Board why the application has been made and make any comments in relation to any observation/objection made in respect of the application)
- (d) Ask the Objector(s) to speak to the Objection(s) or Observation(s) [in turn]
- (e) Give the applicant an opportunity to address any issues raised by the Objector(s).

NOTE TO PARTIES

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof;**
 - **Cross Examination by the parties is not generally permitted**
 - **Hearsay evidence is admissible.**
- (f) Members MAY then question all parties present.
 - (g) Convenor should invite concluding remarks (objector(s) then applicant), but no new evidence, before considering the application.

NOTE TO PARTIES

Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Board Member.

- (h) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

NOTE TO PARTIES

If the Board opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Depute Clerk will remove the parties and all attendees from the meeting. The recording

of the meeting will be paused. On resuming the bench, the Depute Clerk will contact all parties/attendees to re-invite them back into the meeting. On confirming all parties/attendees are again present, the recording of the meeting will be restarted

- (i) Thereafter, the Convenor should confirm with Members that they have sufficient evidence upon which to make a decision.
 - If the Board determines that there is not sufficient evidence upon which to make a decision, the application will be deferred to a future meeting of the Board for further evidence to be obtained.
 - If the Board determines that there is sufficient evidence upon which to make a decision, the Convenor will then:
 - (i) Call for a motion
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Convenor should confirm with the Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Convenor has the casting vote.
- (j) The Depute Clerk will confirm the decision taken by the Board

NOTE TO PARTIES

The parties will then be asked to leave the meeting, failing which the Depute Clerk will remove the parties from the meeting.

APPENDIX 6 WRITTEN SUBMISSIONS (IF RECEIVED)

5. DATE OF NEXT MEETING – 22nd February 2023